Wong Kie Chie & Ors v Kathryn Ma Wai Fong (as the personal representative, executrix and trustee of the estate of the late Wong Kie Nai) & Anor and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS Q-02(IM)-289–02 OF 2016, Q-02(A)-292–02 OF 2016, Q-02(IM)-293–02 OF 2016, Q-02(IM)-294–02 OF 2016, Q-02(IM)-295–02 OF 2016, Q-02(IM)(NCVC)-296–02 OF 2016, Q-02(IM)(NCVC)-297–02 OF 2016, Q-02(IM)(NCVC)-298–02 OF 2016, Q-02(IM)(NCVC)-299–02 OF 2016, Q-02(IM)(NCVC)-300–02 OF 2016, Q-02(IM)(NCVC)-301–02 OF 2016, Q-02(IM)(NCVC)-341–02 OF 2016, Q-02(IM)(NCVC)-342–02 OF 2016, Q-02(IM)(NCVC)-343–02 OF 2016, Q-02(IM)(NCVC)-390–03 OF 2016, Q-02(IM)-344–02 OF 2016, Q-02(IM)-345–02 OF 2016, Q-02(IM)-346–02 OF 2016, Q-02(IM)-347–02 OF 2016, Q-02(IM)-348–02 OF 2016 AND Q-02(IM)(NCVC)-390–03 OF 2016
ZAWAWI SALLEH, VERNON ONG AND ABDUL KARIM JJCA
24 JANUARY 2017

Civil Procedure — Judge — Self-recusal — High Court judge recused himself on ground he had heard 'baseless rumours' that disabled him from making fair and just decision in 17 originating summonses and three writ actions pending before him — Recusal order not made on application of any party — Whether judge's action delayed and disrupted pending proceedings and prejudiced parties with added costs, expense and wastage of time — Whether 'baseless rumours' could not be ground for self-recusal — Whether judge's fear he would be unable to make fair and just decision misplaced as law would not presume judge would be biased — Whether recusal order not ruling made in course of trial or hearing within meaning of s 3 of the Courts of Judicature Act 1964 ('the CJA') but an appealable order under s 67(1) of the CJA

The sole issue in the 20 appeals herein was whether it was right of the High Court judge presiding over the pending 17 originating summonses ('OS') and three writ actions herein to have, on his own motion, recused himself from hearing those matters further. On the date fixed for the hearing of the cross-examination of deponents of affidavits in 11 of the OS, the judge, before proceedings began, informed parties that he had decided to recuse himself 'from hearing all the cases and related cases involving WTK Group of Companies and Kathryn Ma, Neil and Mimi Wong' because he had heard 'baseless rumours' which disabled him from making 'a fair and just decision' in those cases. Of the 20 cases, one writ action had seen seven days of trial and was adjourned for continued hearing. The appellants argued that the judge's self-recusal simply on the basis he had heard 'baseless rumours' was wrong as

there was no real likelihood of bias or any appearance of bias to justify his action. The respondents, on the other hand, argued that the recusal order was not appealable as it was not a 'judgment or order' referred to in s 67(1) of the Courts of Judicature Act 1964 ('the CJA') but merely a ruling made in the course of trial or hearing which did not finally dispose of the rights of the parties; hence, not a 'decision' within the meaning of s 3 of the CJA. The respondents argued that it was unjust to compel the judge to hear the cases because he had already clearly made it known that the rumours had affected his impartiality and judicial independence; hence, the test of 'real danger of bias' had been fulfilled.

Held, allowing the appeals and setting aside the recusal order:

(1) The recusal order was made by the judge after the parties had introduced themselves and before the proceedings commenced. Clearly, the recusal order was not made in the course of trial or hearing within the meaning of s 3 of the CJA. Accordingly, this court had the jurisdiction to hear and determine the appeals pursuant to s 67(1) of the CJA (see para 43).

(2) The recusal order was made by the judge of his own motion without application from any of the parties. The parties were taken by surprise and were not given an opportunity to address the judge (see para 44).

(3) The impartiality of the judge could not be said to have been displaced merely because he had heard 'baseless rumours'. The judge erred in accepting 'baseless rumours' as sufficient ground to warrant his unilateral recusal from hearing the cases in question. His concern of being unable to make a fair and just decision was misplaced in the light of the principle enunciated in *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors* [1995] 2 MLJ 213 that the law would not suppose a possibility of bias in a judge who was sworn to administer impartial justice and whose authority greatly depended upon that presumption and idea (see para 45).

(4) The judge here had conduct of the cases for the past three years and was familiar with the facts and issues involved. In all the circumstances, the appellants were prejudiced by the judge's unilateral recusal order given the various stages of proceedings reached in the cases. The disruption to the proceedings and the consequent delay in the disposal of the cases had added further costs and expense and time (see para 46).

[Bahasa Malaysia summary

Satu-satunya isu di dalam 20 rayuan di sini adalah sama ada hakim Mahkamah Tinggi yang mempengerusikan lebih 17 saman pemula ('SP') yang belum didengar dan tiga tindakan writ di sini untuk atas pendiriannya sendiri, menarik diri daripada mendengar perkara-perkara tersebut selanjutnya. Pada tarikh yang ditetapkan untuk pendengaran pemerikasaan balas deponen

afidavit-afidavit dalam 11 daripada SP tersebut, hakim, sebelum prosiding bermula, memberitahu pihak-pihak bahawa beliau telah membuat keputusan untuk menarik dirinya 'from hearing all the cases and related cases involving WTK Group of Companies and Kathryn Ma, Neil and Mimi Wong' kerana dia telah mendengar 'baseless rumours' yang tidak membolehkannya daripada membuat 'a fair and just decision' dalam kes-kes tersebut. Daripada 20 kes tersebut, satu tindakan writ telah mengambil masa tujuh hari perbicaraan dan ditangguhkan untuk pendengaran seterusnya. Perayu-perayu berhujah bahawa menarik diri sendiri hanya atas dasar beliau mendengar 'baseless rumours' adalah salah kerana tiada kemungkinan berat sebelah sebenar atau apa-apa kehadiran berat sebelah untuk menjustifikasikan tindakannya. Responden-responden, sebaliknya, berhujah bahawa perintah penarikan diri tidak boleh dirayukan kerana ia bukan 'judgment or order' yang dirujuk di dalam s 67(1) Akta Mahkamah Kehakiman 1964 ('Akta') tetapi semata-mata perintah yang dibuat dalam perbicaraan atau pendengaran yang tidak melepaskan akhirnya hak pihak-pihak; maka, bukan 'decision' dalam maksud s 3 Akta. Responden-responden berhujah bahawa ia adalah tidak adil untuk memaksa hakim untuk mendengar kes-kes kerana beliau telah membuat dengan jelas bahawa khabar angin telah menjejaskan kesaksamaan dan kebebasan kehakimannya; maka, ujian 'real danger of bias' telah dipenuhi.

Diputuskan, membenarkan rayuan-rayuan dan mengenepikan perintah penarikan diri:

(1) Perintah penarikan diri dibuat oleh hakim tersebut selepas pihak-pihak memperkenalkan diri mereka dan sebelum prosiding bermula. Jelas, perintah penarikan diri tersebut bukan dibuat dalam perbicaraan atau pendengaran dalam maksud s 3 Akta. Oleh itu, mahkamah ini mempunyai bidang kuasa untuk mendengar dan menentukan rayuan-rayuan berikutan s 67(1) Akta (lihat perenggan 43).

(2) Perintah penarikan diri tersebut dibuat oleh hakim sendiri tanpa permohonan daripada mana-mana pihak. Pihak-pihak terkejut dan tidak diberi peluang untuk menangani hakim (lihat perenggan 44).

(3) Kesaksamaan hakim tidak dapat dikatakan telah salah letak hanya kerana dia telah mendengar 'baseless rumours'. Hakim tersebut tersilap dalam menerima 'baseless rumours' sebagai alasan mencukupi untuk mewajarkan penarikan diri unilateralnya daripada mendengar kes-kes yang dipersoalkan. Kebimbangannya kerana tidak dapat membuat keputusan adil dan saksama adalah salah tanggap berdasarkan prinsip yang ditetapkan dalam kes *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors* [1995] 2 MLJ 213 bahawa undang-undang tidak bermaksud kemungkinan berat sebelah oleh hakim yang telah mengangkat sumpah untuk melaksanakan kesaksamaan dan yang kuasanya bergantung secara besar ke atas anggapan dan idea tersebut (lihat perenggan 45).

(4) Hakim di sini telah mengendalikan kes-kes tersebut bagi selama tiga tahun yang lalu dan biasa dengan fakta dan isu-isu yang terlibat. Dalam keadaan keseluruhannya, perayu-perayu diprejudiskan oleh unilateral hakim tidak diberi peluang untuk menangani hakim di mana pelbagai peringkat prosiding dicapai dalam kes-kes tersebut. Gangguan kepada prosiding dan kelewatan berbangkit dalam pelepasan kes-kes tersebut telah menambahkan kos dan perbelanjaan tambahan dan masa (lihat perenggan 46).]

Notes

For cases on judge in general, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5100–5174.

Cases referred to

Alkaff & Company v The Governor-In-Council & Ors [1937] 1 MLJ 211 (refd)

Allied Capital Sdn Bhd v Mohamed Latiff bin Shah Mohd and Another Application [2001] 2 MLJ 305, FC (refd)

Christopher ak Bandi @ Josny v Tumbung ak Nakis & Anor (Jamil bin Sindi, third party) [2016] 4 MLJ 100; [2016] 1 LNS 130, CA (refd)

Comsa Farms Bhd v Malaysian Assurance Alliance Bhd (No 1) [2012] 10 MLJ 526; [2012] 3 CLJ 724, HC (refd)

Dato' Tan Heng Chew v Tan Kim Hor [2006] 2 MLJ 293; [2006] 1 CLJ 577, FC (refd)

Dato' Seri Anwar Ibrahim v PP [2011] 2 CLJ 845, CA (refd)

Datuk Seri Tiong King Sing v Datuk Seri Ong Tee Keat & Anor [2015] 1 MLJ 847, CA (refd)

Glomac Resources Sdn Bhd v Majlis Agama Islam Wilayah Persekutuan & Anor [2016] 9 MLJ 584; [2016] 5 CLJ 590, HC (refd)

Haris Fathillah bin Mohd Ibrahim lwn Pendakwa Raya [2015] MLJU 874; [2015] 1 LNS 680, CA (refd)

Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors [1995] 2 MLJ 213; [1995] 2 CLJ 900, CA (refd)

In re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700, CA (refd)

JRL; Ex parte CJL, Re (1986) 161 CLR 343 (refd)

King, The v Essex Justices (Sizer and Others) ex parte Perkins [1927] 2 KB 475, KBD (refd)

King, The v Justices Of Sunderland [1901] 2 KB 357, CA (refd)

King, The v Sussex Justices ex parte McCarthy [1924] 1 KB 256; [1923] All ER Rep 233, KBD (refd)

Law v Chartered Institute of Patent Agents [1919] 2 Ch 276, Ch D (refd)

Locabail (UK) Ltd v Bayfield Properties Ltd and another; Locabail (UK) Ltd and another v Waldorf Investment Corp and others; Timmins v Gormley; Williams v HM Inspector of Taxes and others; R v Bristol Betting and Gaming Licensing

Committee, ex parte O'Callaghan [2000] 1 All ER 65; [2000] HRLR 290, CA (refd)
Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1; [1999] 3 CLJ 65, FC (refd)
Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin [2009] 4 MLJ 484; [2009] 3 CLJ 513, FC (refd)
Metramac Corporation Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (interveners) [2007] 5 MLJ 501; [2007] 4 CLJ 725, FC (refd)
Metropolitan Properties Co (FGC) Ltd v Lannon And Others; Regina v London Rent Assessment Panel Committee, Ex parte Metropolitan Properties Co (FGC) Ltd [1969] 1 QB 577, CA (refd)
Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara [2002] 1 MLJ 321; [2001] 4 CLJ 701, FC (refd)
Porter and another v Magill [2002] 1 All ER 465; [2001] UKHL 67, HL (refd)
Queen, The v Rand and Others [1866] LR 1 QB 230, QBD (refd)
R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No 2) [1999] 1 All ER 577; [1999] 2 WLR 272, HL (refd)
Regina v Barnsley Licensing Justices, ex parte Barnsley and District Licensed Victuallers' Association and Another [1960] 2 QB 167, CA (refd)
Regina v Camborne Justices and Another ex parte Pearce [1955] 1 QB 41, QBD (refd)
Regina v Gough [1993] AC 646; [1993] 2 WLR 883, HL (consd)
Regina v Liverpool City Justices, ex parte Topping [1983] 1 WLR 119, QBD (refd)
Regina v Mulvihill [1990] 1 WLR 438, QA (refd)
Regina v Spencer and Others; Regina v Smails and Others [1987] AC 128, HL (refd)
Residence Hotel and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd [2014] 10 MLJ 413, HC (refd)
Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd [2003] 2 MLJ 495, CA (refd)
Webb v R (1994) 181 CLR 41, HC (refd)
West LB AG London Branch v Pan 2011 WL 2747817; UKEAT/0308/11/DM (unreported) (refd)
William Dimes v The Proprietors of the Grand Junction Canal, TE Skidmore, A Boham, and WW Martin (1852) 10 ER 301; [1852] HL Cas 759, HL (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 67(1)
Judges' Code of Ethics 2009 ss 5, 7(2)
Rules of Court 2012 O 14A

Appeal from: Originating Summons Nos SBW-24–39/3 of 2013, SBW-24–54/3 of 2013, SBW-24–66/3 of 2013, SBW-24–44/3 of 2013, SBW-24–48/3 of 2013, SBW-24 NCVC-3/3 of 2014, SBW-24 NCVC-8/5 of 2014, SBW-24 NCVC-2/2 of 2014, SBW-24 NCVC-9/5 of 2014, SBW-24 NCVC-7/5 of 2014, SBW-24 NCVC-5/4 of 2014, SBW-24 NCVC-7/6 of 2015, SBW-24 NCVC-29/12 of 2015, SBW-24 NCVC-4/10 of 2013, SBW-24 NCVC-63/9 of 2015, SBW-24 NCVC-61/9 of 2015, SBW-24 NCVC-51/8 of 2015, SBW-24 NCVC-85/10 of 2015, SBW-24 NCVC-65/9 of 2015 and SBW-24 NCVC-25/6 of 2014 (High Court, Sibu)

Stanley Eddy (Orlando Chua, George Lim and Wee Wui Kiat with him) (Battenberg & Talma) in Civil Appeal Nos Q-02(IM)-289–02 of 2016, Q-02(A)-292–02 of 2016, Q-02(IM)-294–02 of 2016 and Q-02(IM)(NCVC)-299–02 of 2016 for the appellant.

Sim Hui Chuang (Reddi & Co) in Civil Appeal Nos Q-02(IM)-293–02 of 2016, Q-02(IM)(NCVC)-342–02 of 2016 and Q-02(IM)(NCVC)-343–02 of 2016 for the appellant.

Sim Hui Chuan (Stanley Eddy, Orlando Chua, George Lim and Wee Wui Kiat with him) (Battenberg & Talma) in Civil Appeal Nos Q-02(IM)-295–02 of 2016, Q-02(IM)(NCVC)-296–02 of 2016, Q-02(IM)(NCVC)-297–02 of 2016, Q-02(IM)(NCVC)-298–02 of 2016, Q-02(IM)(NCVC)-300–02 of 2016, Q-02(IM)(NCVC)-301–02 of 2016, Q-02(IM)(NCVC)-341–02 of 2016 and Q-02(IM)-344–02 of 2016 for the appellant.

Stanley Eddy (Battenberg & Talma) in Civil Appeal Nos Q-02(IM)-345–02 of 2016, Q-02(IM)-346–02 of 2016, Q-02(IM)-347–02 of 2016 and Q-02(IM)-348–02 of 2016 for the appellant.

Sim Hui Chuan (Orlando Chua with him) (Wong Orlando Chua & Kuok) in Civil Appeal No Q-02(IM)-390–02 of 2016 for the appellant.

Alvin Yong (Shirleen Ong with him) (Chong Brothers) in Civil Appeal Nos Q-02(A)-289–02 of 2016, Q-02(A)-292–02 of 2016, Q-02(IM)-293–02 of 2016, Q-02(IM)-294–02 of 2016, Q-02(IM)-295–02 of 2016, Q-02(IM)(NCVC)-296–02 of 2016, Q-02(IM)(NCVC)-297–02 of 2016, Q-02(IM)(NCVC)-298–02 of 2016, Q-02(IM)(NCVC)-299–02 of 2016, Q-02(IM)(NCVC)-300–02 of 2016, Q-02(IM)(NCVC)-341–02 of 2016 and Q-02(IM)(NCVC)-342–02 of 2016 for the first respondent.

Nor Syairah Sulaiman (Companies Commission of Malaysia) in Civil Appeal Nos Q-02(IM)-344–02 of 2016, Q-02(IM)-345–02 of 2016, Q-02(IM)-346–02 of 2016, Q-02(IM)-347–02 of 2016 and Q-02(IM)-348–02 of 2016 for the first respondent.

Sim Hui Chuang (Reddi & Co) in Civil Appeal Nos Q-02(A)-289–02 of 2016, Q-02(A)-292–02 of 2016, Q-02(IM)-294–02 of 2016, Q-02(IM)-295–02 of 2016 and Q-02(IM)(NCVC)-299–02 of 2016 for the second respondent.

Orlando Chua (Wong Orlando Chua & Kuok) in Civil Appeal No Q-02(IM)-293–02 of 2016 for the second respondent.

Alvin Yong (Shirleen Ong with him) (Chong Brothers) in Civil Appeal No Q-02(IM)(NCVC)-301–02 of 2016 for the first and second respondents.
Alvin Yong (Shirleen Ong with him) (Chong Brothers) in Civil Appeal Nos Q-02(IM)-344–02 of 2016, Q-02(IM)-345–02 of 2016, Q-02(IM)-346–02 of 2016 and Q-02(IM)-348–02 of 2016 for the second respondent.
Alvin Yong (Shirleen Ong with him) (Chong Brothers) in Civil Appeal No Q-02(IM)(NCVC)-343–02 of 2016 for the respondent.
Alvin Yong (Shirleen Ong with him) (Chong Brothers) in Civil Appeal No Q-02(IM)-390–02 of 2016 for the first, second and third respondents.

Vernon Ong JCA:

[1] The 20 appeals herein relate to a decision of the learned judge of the High Court in Sabah and Sarawak sitting at Sibu given on 18 January 2016 whereby the learned judge decided to recuse himself from hearing all cases and related cases involving the WTK Group of Companies, Kathryn Ma Wai Fong, Neil Wong Hou Lianq and Mimi Wong Hou Wai. All the appeals were heard together as they relate to the same recusal order.

BRIEF ACCOUNT OF THE SALIENT FACTS

[2] For the purposes of these appeals, it is sufficient to allude to the salient facts. Of the 20 appeals herein, 11 appeals relate to applications filed by Kathryn, Neil and Mimi in respect of 11 originating summons ('OS') for, inter alia, an order that all the OS be tried consecutively in a particular sequence and that the deponents of affidavits be cross-examined on their affidavits. On 30 March 2015, the learned judge dismissed all the applications and ordered the 11 OS to be heard jointly. Dissatisfied, Kathryn, Neil and Mimi appealed to the Court of Appeal against the decision of the learned judge.

[3] On 22 October 2015, the Court of Appeal dismissed the bulk of the appeals and only allowed the appeal against the dismissal of their prayer for cross-examination of all the deponents in the 11 OS.

[4] The learned judge then scheduled the cross-examination of the deponents to be conducted on 18 January 2016 and thereafter on other dates.

[5] On 18 January 2016, when parties appeared in court for the cross-examination of deponents in respect of the 11 OS, the learned judge informed the parties of his decision to recuse himself from hearing all cases and related cases involving the WTK Group of Companies, Kathryn, Neil and Mimi ('the recusal order'). The notes of proceedings recorded on 18 January

2016 read as follows:

> In light of the baseless rumours which I have heard, I feel that I am not able to make a fair and just decision in respect of the above cases which are heard jointly and also other related cases. To be fair to all parties, I am recusing myself from hearing all the cases and related cases involving WTK Group of Companies and Kathryn Ma, Neil and Mimi Wong.

[6] Three writ actions were not called up on 18 January 2016 but were also affected by the learned judge's recusal decision. The parties were only informed by the senior assistant registrar by email that the recusal order also applied to the writ action. As at 18 January 2016, one writ action had already gone into seven days of full trial and the trial was scheduled to continue on 9–20 May 2016.

[7] Similarly circumstanced are six other OS which were not called up on 18 January 2016. The parties in these six OS were only informed that the recusal order also applied to their actions by the senior assistant registrar in a subsequent email.

[8] In short, the recusal order affects amongst others:

(a) 11 OS which were called up on 18 January 2016;

(b) three writ actions which were not called up on 18 January 2016; and

(c) six OS which were not called up on 18 January 2016.

[9] The principal grounds advanced by learned counsel for the appellants may be summarised as follows:

(a) the learned judge had recused himself on his own motion even though there was no application for recusal by the parties;

(b) the learned judge had taken into consideration baseless rumours which he had heard in deciding to recuse himself; and

(c) there was no real likelihood of bias or any appearance of bias to justify the learned judge in recusing himself.

[10] For the respondents, learned counsel argued firstly that the recusal order is not appealable as it is a ruling and not a decision within the meaning of s 3 of the Courts of Judicature Act 1964 ('the CJA 1964'). As such, the recusal order is only a ruling made in the course of a trial or hearing which does not finally dispose of the rights of the parties; it is not a judgment or order within the meaning of s 67(1) of the CJA 1964 (*Datuk Seri Tiong King Sing v Datuk Seri Ong Tee Keat & Anor* [2015] 1 MLJ 847 (CA); *Syarikat Tingan Lumber*

Sdn Bhd v Takang Timber Sdn Bhd [2003] 2 MLJ 495; *Haris Fathillah bin Mohd Ibrahim lwn Pendakwa Raya* [2015] MLJU 874; [2015] 1 LNS 680; *Christopher ak Bandi @ Josny v Tumbung ak Nakis & Anor (Jamil bin Sindi, third party)* [2016] 4 MLJ 100; [2016] 1 LNS 130; *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2011] 2 CLJ 845).

[11] Secondly, learned counsel argued that the learned judge is unable to ignore the extraneous considerations and possibly prejudices in the form of rumours he heard. The rumours may be baseless but the fact remains that it has affected the impartiality and judicial independence of the learned judge. As such, the test of 'real danger of bias' is clearly met and it would be unjust to force the learned judge to continue hearing the cases (*Regina v Gough* [1993] AC 646; [1993] 2 WLR 883; *Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara* [2002] 1 MLJ 321; [2001] 4 CLJ 701 (FC); *Metramac Corporation Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (interveners)* [2007] 5 MLJ 501; [2007] 4 CLJ 725 (FC); *Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin* [2009] 4 MLJ 484; [2009] 3 CLJ 513 (FC)).

LAW ON JUDICIAL RECUSAL — AN OVERVIEW

[12] Upon ascending the bench, every judge of the superior courts in Malaysia takes an oath to discharge his judicial duties honestly and impartially to the best of his ability. As such, judges are duty bound to make decisions according to law, uninfluenced by personal bias, conflict of interest, without fear or favour, affection or ill-will or prejudice. Accordingly, a judge's duty to act honestly and impartially is a defining feature of, and one of the most fundamental principles which is naturally intrinsic to the judge's role in the administration of justice.

[13] The doctrine of judicial recusal dictates that a judge may recuse himself from proceedings if he decides that it is not appropriate for him to hear a case. A judge may recuse himself when a party applies for him to do so and he must step down where there appears to be actual or apparent bias (*Judicial Recusal*, Masood Ahmad, University for Leicester, The Law Society Gazette). Thus, when the impartiality of a judge is in doubt, the appropriate remedy is to disqualify the judge from hearing further proceedings in the matter.

[14] The primary source of recusal law in Malaysia is the English common law. Be that as it may, it is pertinent to note that the Judges' Code of Ethics 2009 ('the Code') sets out the basic standards to govern the conduct of all judges and it provides guidance in setting and maintaining high standards of personal and judicial conduct. In essence, the Code elucidates the inherent

characteristics of the judges' role in the administration of justice and encapsulates the principles that a judge should decide a case according to law and without bias, must be impartial and act independently uninfluenced by all considerations extraneous to the particular case: s 5 of the Code.

[15] In this connection, s 7(2) of the Code belongs to the category of automatic disqualification. Remarkably plain in language and devoid of any embellishment, s 7(2) prohibits a judge from participating in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case. Thus, where a judge has or is shown to have this kind of relationship involving a case in which he is presiding, proof the requisite fact, that is the existence of bias, is effectively presumed, which presumption gives rise to automatic disqualification.

[16] Under English common law, the accepted basis for judicial disqualification began with financial or pecuniary interest, that is, where a judge sitting in a judicial capacity has a pecuniary or proprietary interest in the outcome of the proceedings. Similarly, on proof of such interest, the existence of bias is effectively presumed and as such gives rise to automatic disqualification. This is because the existence of such circumstances are such that they must inexorably shake or undermine public confidence in the integrity of the administration of justice and may bring the justice system into disrepute if the decision is allowed to stand. In such cases, not only is it irrelevant that there is in fact no bias on the part of the judge, but there is no question of investigating whether there is any real likelihood of bias, or any reasonable suspicion of bias, in the facts of the particular case. The nature of the interest is such that public confidence in the administration of justice requires that the judge concerned should recuse himself from hearing the case lest the decision should not stand (*The King v Sussex Justices ex parte McCarthy* [1924] 1 KB 256; [1923] All ER Rep 233; *Regina v Gough* [1993] AC 646; [1993] 2 WLR 883; *William Dimes v The Proprietors of the Grand Junction Canal, TE Skidmore, A Boham, and WW Martin* (1852) 10 ER 301; [1852] HL Cas 759; *The Queen v Rand and Others* [1866] LR 1 QB 230; *Regina v Camborne Justices and Another ex parte Pearce* [1955] 1 QB 41).

[17] The issue of automatic disqualification came to be considered by the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1; [1999] 3 CLJ 65. In that case, due to impending eviction of squatters on the land, including Rabeah, the respondent had to engage in some negotiations with a Council ('the appellant') member one Khan who was Rabeah's uncle. The respondent offered Rabeah a two-bedroom flat for free, but the offer was rejected by Khan who wanted a three-bedroom flat for Rabeah. Khan had sat and participated at every meeting of the appellant at

which the respondent's planning permission was discussed. The Federal Court held that on the facts as admitted by Khan himself, personal interest in the outcome of the application for the extension of planning permission made by the respondent by him championing the cause of his niece when negotiating with the respondent about the flat to be given to her was sufficient to lead to his automatic disqualification.

[18] The automatic disqualification rule was extended to a limited class of non-financial interests by the House of Lords in *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No 2)* [1999] 1 All ER 577; [1999] 2 WLR 272. In that case, Lord Hoffmann was disqualified because of his links to Amnesty International who was a party to the appeal; Lord Hoffmann was a director of a charity closely allied to Amnesty International and sharing the latter's objects.

[19] Whilst the House of Lords in *Regina v Gough* and the Court of Appeal in *Locabail (UK) Ltd v Bayfield Properties Ltd and another; Locabail (UK) Ltd and another v Waldorf Investment Corp and others; Timmins v Gormley; Williams v HM Inspector of Taxes and others; R v Bristol Betting and Gaming Licensing Committee, ex parte O'Callaghan* [2000] 1 All ER 65; [2000] HRLR 290 acknowledged that objections and applications for recusals based on actual bias were extremely rare, judges routinely took care to disqualify themselves, in advance of hearing and where actual bias was proved, that was the end of the case, the judge must be disqualified.

[20] Quite apart from cases of automatic disqualification, disqualification may arise in a wide variety of circumstances which may extend beyond actual bias to perceived or apparent bias. Such interest, as Lord Goff in *Regina v Gough* put it, 'may vary widely in nature, in their effect, and in their relevance to the subject matter of the proceedings; and there is no rule, as there is in the case of pecuniary interest, that the possession of such an interest automatically disqualifies the member of the tribunal from sitting. Each case falls to be decided on its own facts'. In *Regina v Gough* and *Locabail (UK) Ltd*, it was decided that in cases other than those cases which fall within the category of automatic disqualification, a judge might be disqualified and his decision set aside if on an examination of all the circumstances the court concluded that there was a real danger of possibility of bias so that justice required that the decision should not stand. What has emerged from these decisions is that the proof of actual bias is difficult as the law does not countenance the questioning of a judge about extraneous influences affecting his mind and the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring them to show that such bias actually exists.

[21] Prior to the decisions of *Regina v Gough* and *Locabail (UK) Ltd*, there had been some divergence in English authorities as to the test to be applied in order to determine whether there was a real danger or likelihood of bias. A number of English cases have adopted the reasonable observer test which is based on the old and established principle that justice should not only be done but should manifestly and undoubtedly be seen to be done (*Law v Chartered Institute of Patent Agents* [1919] 2 Ch 276 at p 290; *The King v Sussex Justices ex parte McCarthy*; *Metropolitan Properties Co (FGC) Ltd v Lannon And Others; Regina v London Rent Assessment Panel Committee, ex parte Metropolitan Properties Co (FGC) Ltd* [1969] 1 QB 577 at pp 599, 602 and 606; *Regina v Liverpool City Justices, ex parte Topping* [1983] 1 WLR 119 at p 123; *Regina v Mulvihill* [1990] 1 WLR 438 at p 444). Other English cases expressed the test in terms of a real danger or likelihood of bias (*The Queen v Rand and Others*; *The King v Justices Of Sunderland* [1901] 2 KB 357; *Regina v Camborne Justices and Another ex parte Pearce*; *Regina v Barnsley Licensing Justices, ex parte Barnsley and District Licensed Victuallers' Association and Another* [1960] 2 QB 167 at p 186; *Regina v Spencer and Others; Regina v Smails and Others* [1987] AC 128).

[22] At any rate, the conflict of judicial opinions appears to have been resolved in England and Wales by the House of Lords' decision in *Regina v Gough* when it applied the real danger of bias test. Lord Goff at pp 668 and 670 said:

> In my opinion, if, in the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Furthermore, the test as so stated gives sufficient effect, in cases of apparent bias, to the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion, to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose.
>
> In conclusion, I wish to express my understanding of the law as follows.
>
> I think it possible, and desirable, that the same test should be applicable in all cases of apparent bias, whether concerned with justices or members of other inferior tribunals, or with jurors, or with arbitrators. Likewise, I consider that, in cases concerned with jurors, the same test should be applied by a judge to whose attention the possibility of bias on the part of a juror has been drawn in the course of a trial, and by the Court of Appeal when it considers such a question on appeal. Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. Finally, for the avoidance of doubt, I prefer to state the

> test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him ...

[23] However, the attempt by the House of Lords to resolve the conflict of judicial opinion in *Regina v Gough* had not commanded universal approval in the light of subsequent decisions in Canada, New Zealand and Australia (see *ex parte Pinochet Ugarte*. The reasonable likelihood and real danger tests which Lord Goff described in *Regina v Gough* had been criticised by the High Court of Australia in *Webb v R* (1994) 181 CLR 41 on the ground that they emphasized the court's view of the facts and placed inadequate emphasis on the public perception of the irregular incident.

[24] Nevertheless, eight years after its decision in *Regina v Gough* the House of Lords in *Porter and another v Magill* [2002] 1 All ER 465; [2001] UKHL 67, considered that the approach described as the reasonable apprehension of bias test was in line with that adopted in most common law jurisdictions and that it was also in line with that which the Strasbourg Court had adopted which looked at the question whether there was a risk of bias objectively in the light of circumstances which the court identified. In effect, the House of Lords in *Porter*, reconsidered the whole question relating to the precise test to be applied and approved the Court of Appeal's modest adjustment of the real danger of bias test in *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700 which was summarised in the following words:

> When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.

[25] Notwithstanding the aforesaid, the House of Lords in *Porter* while making the modest adjustment, formulated the new test in terms of the possibility of bias preferring a lower standard than the likelihood or probability of bias. Hence, the House of Lords laid down the following test:

> The question is whether the fair-minded and informed observer, having considered the fact, would conclude that there was a real possibility that the tribunal was biased.

A LEGAL POSITION IN MALAYSIA

[26] In *Alkaff & Company v The Governor-In-Council & Ors* [1937] 1 MLJ 211, it was argued that an officer appointed under the Municipal Ordinance ought to have been an impartial officer and that as he was a member of the Improvement Trust, he was not an impartial officer. It was alleged that the officer in question Mr Ebden did not conduct the inquiries in an impartial or judicial manner. The Court of Appeal, in the judgment of Terell Ag CJ, applying the general principle in *The King v Essex Justices (Sizer and Others) ex parte Perkins* [1927] 2 KB 475 held that Mr Ebden's dual position as a member of the improvement trust which had approved the back land schemes, and had then, as the officer appointed under the Municipal Ordinance, inquired into the merits of the same schemes, could only result in a suspicion that justice might not be done. Therefore, irrespective of his actual conduct of the inquiry, the rule that nothing was to be done which created even a suspicion that there had been an improper interference with the ordinary course of justice, which was the general principle affecting the possibility of bias, applied to the officer who acted in a quasi-judicial capacity. It would appear that the Court of Appeal in *Alkaff* preferred the mere suspicion of bias test and contemplated a lower standard in terms of possibility rather than probability of bias.

[27] Meanwhile, in 1999 the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* decided to follow the House of Lords' decision in *Regina v Gough* preferring the test of apparent bias (the real danger of bias test) as this would avoid setting aside of judgments upon quite unsubstantial grounds and the flimsiest pretext of bias. Having regard to the facts admitted by Khan in his affidavit, the Federal Court held that the conduct and behaviour of Khan were such that the respondent had clearly succeeded in establishing a real danger of bias under the rule in *Regina v Gough*, in other words a case on non-automatic disqualification. At p 129 of the judgment, Edgar Joseph Jr FCJ said:

> Explaining the 'real danger' of bias test Lord Goff put it this way (at p 670 F):
>
> > Having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard '(or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him'.
>
> Lord Goff went on to substitute 'the opinion of the court' for Lord Denning's 'reasonable people' in *Lannon*. Here is what he said on this point:
>
> > ... Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and

in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time.

The 'real danger' test favoured in *Gough* could be seen as a compromise between 'the reasonable suspicion' of bias test and the 'real likelihood' of bias test so as to stress that the court is contemplating a lower standard than 'likelihood' or 'probability of bias', that is to say, a 'real possibility of bias'. See, *Gough* at pp 668 C–D, 670 E–F, per Lord Goff at p 671 B–C, per Lord Woolf.

It is also important to note that the question of bias has to be answered by considering all the facts not merely by reference to the view of the hypothetical reasonable man (*R v Gough*, per Lord Goff, at p 670 D–E).

[28] Subsequently, in *Allied Capital Sdn Bhd v Mohamed Latiff bin Shah Mohd and Another Application* [2001] 2 MLJ 305 (FC), the appellant raised a primary point of bias on the part of the presiding judge in the Court of Appeal on the grounds of the judge's membership of the Raintree Club of Kuala Lumpur ('the club') and the allegation that he acted professionally for the appellant on the very issues in issue in the suit which concerned the club. But the judge had made full disclosure of his interest in the case by informing counsel that he was a member of the club and that he had not acted for any of the parties in the appeal and that he had checked with his former office and was informed that he had not acted for the subject matter of that brief he was involved when he was a member of the bar was unconnected with the subject matter of the appeal. Counsel did not raise any objection as to the propriety of the judge hearing the appeal. The appellant, during the leave application before the Federal Court, produced an affidavit alleging that the judge had in fact acted for the appellant in connection with the project for the setting up of the club. The Federal Court acknowledged that the issues raised touched upon a very fundamental aspect of the administration of justice and public confidence in the system of justice. Nevertheless, applying the real danger test, the Federal Court was satisfied that the objection of the appellant was without merit. The judge had made full disclosure of facts to counsel and in the absence of any objections from counsel. The judge genuinely believed that he could continue to sit as a member of the coram hearing the appeal. The appellant had ample time to cross check if they had any misgivings as to the position of the judge as they should raise objection at the earliest opportunity upon disclosure by the judge.

[29] Meanwhile in *Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara* [2002] 1 MLJ 321; [2001] 4 CLJ 701 (FC), the issue for determination before the Federal Court was the correct test to apply when apparent bias was alleged. The appellant had applied to recuse the trial judge on the ground that he had heard the case involving Dato' Seri Anwar Ibrahim. The

learned judge in dismissing the application used a reasonable person test. At the Federal Court, the appellant relying on the Australian case of *Webb v R* argued that the appropriate test should be a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the judge would not discharge his task impartially. The Federal Court citing *Regina v Gough* and *Locabail (UK) Ltd* and *Majlis Perbandaran Pulau Pinang* applied the real danger of bias test. The Federal Court held that there was no real likelihood of danger in the sense of a real possibility of bias on the part of the judge when he heard the appellant's habeas corpus application. However, the Federal Court went on to hold that even if the reasonable apprehension of bias test was applied to the circumstances of the case, the court would have arrived at the same conclusion.

[30] In *Dato' Tan Heng Chew v Tan Kim Hor* [2006] 2 MLJ 293; [2006] 1 CLJ 577 (FC), the Court of Appeal took the view that the learned judge of the High Court had asked wrong question when she applied the real danger of bias test. The Court of Appeal formulated a new test to be applied in determining perceived or apparent bias which did not accord with the applicable test adopted by the Federal Court in *Majlis Perbandaran Pulau Pinang*. As such the question of law referred to the Federal Court was couched as follows:

> Whether the new test for recusal formulated by the Court of Appeal in these words: 'would a right thinking member of the public armed with the facts before us come to the conclusion that the appellant would receive justice at the end of the trial before the same judge'.

[31] The Federal Court, after reviewing its earlier decisions in *Majlis Perbandaran Pulau Pinang* and *Mohamed Ezam* held that these decisions being decisions of the Federal Court, were binding on the Court of Appeal. The doctrine of *stare decisis* required the Court of Appeal to follow the real danger of bias test adopted by the Federal Court in *Majlis Perbandaran Pulau Pinang*. In this connection, it is pertinent to note the Federal Court's observation that in England the *Regina v Gough* test had been modified by the House of Lords in *Porter* and that the modification was made to bring it closer with Strasbourg jurisprudence which, since 2 October 2000 the English Courts were required to take into account. But that reason, according to the Federal Court, was not relevant in Malaysia adding that the old test would not lead to any injustice nor would the new test lead to more justice.

[32] In *Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin* [2009] 4 MLJ 484, the Federal Court reaffirmed the legal position premised on the real danger of bias test when it accepted that the law on the subject of judicial bias was settled. Therefore, the law in Malaysia on the appropriate test

of apparent bias has been finally settled by the Federal Court in *Dato' Tan Heng Chew*'s case.

[33] At this point, it is pertinent to emphasise that circumstances amounting to perceived or apparent bias are so varied that great reliance must be placed on the judgment of the judge. At the end of the day, the decision whether to recuse from the case will depend fundamentally on the particular facts and circumstances of each case and the court should be vigilant not to allow parties to do judge-shopping by recusal of judges (*Locabail (UK) Ltd*; *Dato' Tan Heng Chew*). Whilst it is important that justice must be seen to be done, it is equally important that judges discharge their duties to sit, do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour (*Re JRL; ex parte CJL* (1986) 161 CLR 343 at p 352).

[34] As a matter of procedure, where in any case not giving rise to automatic disqualification and not causing personal embarrassment to the judge, he or she is or becomes aware of any matter which can give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. If objection is then made, it will be the duty of the judge to consider the objection and exercise his judgment upon it (*Locabail (UK) Ltd*).

[35] In *Glomac Resources Sdn Bhd v Majlis Agama Islam Wilayah Persekutuan & Anor* [2016] 9 MLJ 584; [2016] 5 CLJ 590, the defendant sought to recuse the judge on the ground that he and the plaintiff's counsel were once partners in a law firm. It was held that a judge or counsel for a party should inform parties of any relationship which might give rise to bias at the earliest possible date. However, the court in *Glomac* held that the fact that the judge worked at the firm was a matter of public record and past relationship between the judge and counsel per se, was not generally a disqualification or a ground for recusal of the judge.

[36] In *Raja Petra*, the Federal Court provided two other instances which are not considered cogent evidence for recusal. The first relates to the respondent's criticism of the judge on his website and the second to the fact that the judge had dismissed the previous application for habeas corpus by the respondent. The Federal Court observed that the judge did not respond to the criticism, neither was the respondent cited for contempt. Further, the judge was not precluded from hearing a case against a person when he had in the past heard another case against the person if the facts were different. The Federal Court also observed that the judge did not go into the facts of the case in the earlier application as it was agreed by the parties in that case that the decision in one

case that was being heard should be binding on the respondent. Thus, the Federal Court found that there was no real danger of bias.

[37] In *Residence Hotel and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd* [2014] 10 MLJ 413, the defendant applied to recuse the judge from hearing an O 14A application (seeking orders in relation to whether the defendant was precluded from maintaining the counterclaim) on the ground that the judge had allowed the plaintiff's application for summary judgment. It was also contended that the judge had in his judgment advised the defendant to reconsider its position as to whether to proceed with the counterclaim. The High Court held that the grounds raised by the defendant were insufficient to recuse the bench. If the application for recusal was allowed freely, it would encourage tactical applications by litigants seeking another judge to hear their case. A judge's decision which did not favour a litigant could not be used as an instrument to recuse the judge or to remove the case to another court. Preconceived opinion by a judge did not constitute such a real bias so as to justify the recusal of the judge as the decision of the court in a pending matter would still be based and decided on the evidence and material before the court. Similarly in *Comsa Farms Bhd v Malaysian Assurance Alliance Bhd (No 1)* [2012] 10 MLJ 526; [2012] 3 CLJ 724, the High Court held that a judge's findings made according to law in a particular suit could not be a ground for recusal applications in other suits.

[38] A judge has a duty to sit where not disqualified which is equally as strong as the duty not to sit where disqualified (Laird 509 US 824 (1972) at p 837 as cited in an article entitled *Inappropriate Recusals* Abimbola A Olowofoyeku; Law Quarterly Review). The right of fair hearing requires that a judge compromised by interest or favour must withdraw from the case.

[39] Nevertheless, there are situations in which it would be inappropriate for a judge to recuse himself. In one case, the judge having considered that the grounds for recusal have not been satisfied, but the judge proceeded to recuse himself not on grounds argued before him. In *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors* [1995] 2 MLJ 213; [1995] 2 CLJ 900, the trial judge, in the course of hearing an application for extension of an injunction, made a remark on the respondent's evidence to the effect that the evidence disclosed a defence which 'to say the least, is inherently incredible'. The respondents took the judge's comment as expressing a concluded view upon their defence, and applied to disqualify the judge from hearing the trial of the action on grounds of possible bias. The judge acceded to the request but not for the reasons advanced by the respondent which he considered groundless. Instead, the judge decided upon disqualification simply because he did not wish 'to be saddled with those allegations while hearing the case at the trial'. The Court of Appeal held that a judge must confine himself to the points raised by counsel

and not decide a case upon a matter not raised by counsel unless he put the point fairly to both sides. The judge failed to act in accordance with decided principles. He had decided on disqualification not on grounds argued before him. His fear that an allegation might later be made against him is *non sequitur*. He was at pains to point out his lack of prejudice, yet he was not prepared to hear the case. To allege bias, there must be circumstances upon which suspicion could be grounded that the judge would appear to be biased. The proper test was whether a reasonable and fair-minded person sitting in court and knowing all relevant facts would have ground to suspect that a fair trial would not be possible; there was no such ground.

[40] Thus, appeasement is not an appropriate ground for recusal. In *West LB AG London Branch v Pan* 2011 WL 2747817; UKEAT/0308/11/DM (unreported 19 July 2011 EAT) as cited in *Inappropriate Recusal* the judge considered that the requirements for recusal had not been met, but decided to recuse herself, in order to save costs on both sides, enable the parties to concentrate on the substantive issues in the run up to the hearing, and to ensure 'that any upset that this issue is causing to the claimant, who is unwell, does not continue'. On appeal to the EAT, HH Judge Richardson said that it was 'plain that the Employment Judge did not decide the application to recuse herself upon correct principles'.

[41] Accordingly, judges should balance properly their competing duties as judges when recusal applications fall to be decided by them. Settled principles dictate that judges have a duty to sit and adjudicate on cases allotted to them, displaced only when there are objectively justifiable grounds for recusal, that litigants cannot judge-shop and judges cannot case-shop and that the administration of justice is served as much aby a fearless and confident Judiciary as by a fair Judiciary *(Inappropriate Recusals).*

DECISION

[42] We will deal with the preliminary question of whether the recusal order is a ruling. If as contended by the respondents the recusal order is a ruling, then it is not appealable as it is not a decision within the meaning of s 3 of the CJA 1964.

[43] According to the appeal record, the parties appeared before the learned judge on 18 January 2016 for the conduct of the cross-examination proceedings. After the parties had introduced themselves and before the commencement of the proceedings the learned judge made his recusal order. Clearly, the recusal order was not made in the course of the trial or hearing within the meaning of s 3 of the CJA 1964. We are fortified in our view in that

an order to that effect was subsequently drawn up and sealed by Senior Assistant Registrar of the High Court, Sibu. Accordingly, we hold that this court have the jurisdiction to hear and determine the appeals pursuant to s 67(1) of the CJA 1964.

[44] This is an instance where there was no application for recusal made by any of the parties. The recusal order was made by the learned judge on his own motion. The parties were taken by surprise and were not given any opportunity to address the learned judge. The learned judge appeared to have made his decision '(in) the light of baseless rumours which I have heard, I feel that I am not able to make a fair and just decisions in respect of the above cases which are heard jointly and also other related cases'.

[45] In the light of the defined principles adumbrated above, we are inclined to agree with learned counsel for the appellants that the impartiality of the learned judge cannot be said to be displaced merely because the learned judge heard 'baseless rumours'; which rumours the learned judge himself stated to be baseless. As such, we take the view that the learned judge erred in accepting 'baseless rumours' as sufficient ground upon which to warrant his unilateral recusal from hearing the cases in question. The learned judge's concern of being unable to make a fair and just decision is misplaced in light of the principle enunciated in *Hock Hua Bank (Sabah) Bhd* that the law will not suppose a possibility of bias in a judge who is sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea.

[46] We would also add that the learned judge has had conduct of the cases for the past three years and is familiar with the facts and the issues involved. In all the circumstances, we also find that the appellants have been prejudiced by the learned judge's unilateral recusal order given the various stages in the proceedings in the cases. The disruption to the proceedings and the consequent delay in the disposal of the cases have added further costs and expense and time.

[47] For the foregoing reasons, we are constrained to set aside the recusal order of the learned judge. The appeals are thereby allowed. However, in view of the circumstances, we made no order as to costs.

[48] In closing, it would be remiss on my part if I did not acknowledge the huge debt and credit owing to Justice Idrus Harun JCA for graciously consenting to share his learned paper on 'Judicial Recusal' which was presented at the 4th Joint Judicial Conference between Brunei, Malaysia and Singapore held from 4–6 November 2016.

Appeals allowed and recusal order set aside.

Reported by Ashok Kumar